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Supreme Court, U.S.
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No. 96-2034

In The

# Supreme Court of the United States

October Term, 1996

SFIC PROPERTIES, INC.,

*Plaintiff/Appellee/Petitioner,*

v.

INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, DISTRICT LODGE 94, LOCAL LODGE 311, aka IAMAWD,

*Defendant/Appellant/Respondent.*

**On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit**

## PETITIONER'S REPLY TO RESPONDENT'S OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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## PETITIONER'S REPLY TO RESPONDENT'S OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Petitioner, SFIC Properties, Inc. ("SFIC"), respectfully submits this reply brief, pursuant to Supreme Court Rule 15(6), to address a new point raised in Respondent's brief in opposition.

## ARGUMENT

### SFIC DID NOT WAIT UNTIL THE POST-HEARING ARBITRATION BRIEFS TO ASSERT THE COMPANY'S EXCLUSIVE RIGHT TO DISCIPLINE AND DISCHARGE EMPLOYEES, BUT RAISED THIS ISSUE AT THE START OF THE ARBITRATION HEARING.

In Respondent's Opposition to Petition for Writ of Certiorari, Respondent implies that SFIC did not assert, at the arbitration hearing, the company's exclusive contractual right to discipline and discharge employees, but instead raised the issue as an afterthought in its post-hearing arbitration brief. (See Opposition at pages 1-2.) In fact, however, SFIC raised this issue at the start of the arbitration hearing.

In Respondent's Excerpts of Record filed with the Court of Appeals, Respondent attached several pages of the transcript of the arbitration hearing. (See Excerpt No. 3, attached to the Appendix hereto at App. 1-3.) As reflected at the top of page 11 of the transcript, SFIC's

counsel argued at the beginning of the arbitration hearing that "discipline and discharge are exclusive rights of the management. . . . " (Appendix at App. 3.)

Accordingly, there can be no waiver of this issue as Respondent suggests.

## CONCLUSION

Thus, for this reason as well, SFIC respectfully submits that its petition for writ of certiorari should be granted.

Dated: August 14, 1997

Respectfully submitted,

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# APPENDIX

IN ARBITRATION PROCEEDINGS
PURSUANT TO AGREEMENT BETWEEN THE PARTIES

IN THE MATTER OF A CONTROVERSY,
Between,
I.A.M. & A.W. DISTRICT LODGE 94, LOCAL LODGE 311
Union,
SANTA FE INTERNATIONAL PROPERTIES, INC.,
Employer.

The arbitration proceedings, taken before Kathy L. McCammon, Certified Shorthand Reporter 5684 for the State of California, commencing at 9:30 a.m., Wednesday, June 3, 1992, held at the premises of Santa Fe International, 1000 South Fremont Avenue, Alhambra, California.

* * *

[p. 11] that discipline and discharge are exclusive rights of the management and the seniority clause doesn't change that nor does it address it directly. We with that in mind, we were unable to agree as to an issue for today. So I think both sides are going to present their open issues to you.

THE ARBITRATOR: All right. Would you like to do that now or do you want to wait later on in the proceedings?

MS. AHRENS: Now is fine. If you are ready for it.

MR. BINGHAM: Now is fine.

THE ARBITRATOR: I am ready.

MS. AHRENS: Okay. The company's issue is did the company violate the collective bargaining agreement in the termination of Julio Rodriguez.

THE ARBITRATOR: Okay.

MR. BINGHAM: Our issue to be presented is whether the employer had just cause within the meaning of the collective bargaining agreement to terminate the employment of the grievant, Julio Rodriguez, on or December 13, 1991, and the second issue of course is if the answer to –

THE ARBITRATOR: One mistake in your issue is you have used the date to which you have not stipulated and that was the 13th. Pardon me. Yes, okay. Forgive me. Repeat your issue for me.

[p. 12] MR. BINGHAM: Whether the employer – and I misspoke originally – whether the employer had just cause to terminate the employment of grievant, Julio Rodriguez, on or about December 13, 1991. And then if the answer to the above issue is in the negative, what is the appropriate remedy?

THE ARBITRATOR: All right. For the sake of convenience and all of those here who are going to be witnesses, I assume everybody in the room save the court reporter has affixed his name to the present witness sheet and if you will all raise your hand you will be sworn in now.

Do you solemnly swear or affirm that the testimony you are about to give in this matter will be the truth and nothing but the truth?

(Mr. Haupt, Mr. Rodriguez, Mr. Robledo, Mr. Sanchez said yes.)

THE ARBITRATOR: Any other witnesses who arrive will be sworn in as they come in. Miss Ahrens.

MS. AHRENS: Are you ready for our first witness?

THE ARBITRATOR: Yes.

MS. AHRENS: Can we go off the record for one moment?

THE ARBITRATOR: Sure.

(Recess taken.)

THE ARBITRATOR: All right. We will go back on the

* * *